

DAVID BINDON, *Esq;* - - - Appellant.WILLIAM RYVES, *Merchant,* - - - Respondent.

The Respondent's CASE.

Aug. & Sept.
1720. Bills for
1400l.

IN the Months of *July* and *September* 1720 one *William Doyle*, a Merchant in *London*, drew several Bills of Exchange on the Respondent in *Dublin* for several Sums of Money, amounting together to near 1400l.; and to enable the Respondent to pay the same, the said *Doyle* in *August* and *September* 1720 drew Three Bills on the Appellant in *Limerick*, payable to the Respondent, for several Sums, amounting to 1400l.

The Respondent, on the Credit of the Appellant, was prevailed on to accept, and did actually pay the several Bills drawn on him by the said *Doyle*, and the Appellant accepted the Three Bills drawn by *Doyle* on him; but the Appellant neglecting to pay the same as they became due, the Respondent caused those Bills to be protested for Non-payment, and sent such Protests to the said *Doyle*, in order to make him liable as well as the Appellant.

29 Nov. 1720.
Bond, Judgm.
& Mortgage.

Besides the 1400l. due from the Appellant on the said Bills, he owed to the Respondent on another Account about 80l. which occasioned the Respondent's going to *Limerick*, where he prevailed with the Appellant to execute the following Securities, viz. A Bond dated *November* 19, 1720, whereby the Appellant was bound to the Respondent in 2960l. Penalty for Payment of the said 1480l. with Interest. — A Warrant of Attorney for confessing Judgment on the said Bond. — An Assignment of an House and Storehouse in *Limerick*. — A Bill of Sale of a Moiety of a Ship called the *Frances*, together with a Moiety of her Cargo. — A Sixth Part of a Ship called the *Succefs*, and One Third Part of a Cargo of Fish he had sent to *Venice*. On executing of all which Securities, the Respondent delivered up to the Appellant the said Bills for 1400l. with Receipts thereon, and discharged him of the said 80l.

The Appellant neglecting to pay the said 1480l. and keeping Possession of the said House and Storehouse, and of the Moiety of the said Ship *Frances*, the Ship *Succefs* never returning from the Voyage she was then upon, and the Appellant having actually made over the *Venice* Cargo to the said *Doyle* Three Months before the Date of his Assignment thereof to this Respondent, and the Respondent not being able to raise more Money by his said Security than about 300l. which he received for the Cargo and Freight of the said Ship *Frances*, he the said Respondent, about the latter End of the Year 1721, or Beginning of the Year 1722, outlawed the Appellant, and procured the said House and Storehouse to be sold, by which he received about 190l. more; and a *Custodium* was granted to him of the Appellant's Estate.

3 May 1722.
Original Bill.
29 Nov. 1723.
Supplemental
Bill.

The Appellant *May* 3, 1722 filed an Original Bill, and the 19th of *November* 1723 a Supplemental Bill in the Court of Exchequer in *Ireland* against the Respondent, the said *Doyle*, and others, whereby he charged the Respondent with being Partner or Factor for *Doyle*, and prayed that as such he might account with the Appellant, not only for what he the Respondent had received on the said Securities, but also for the said Third Part of the *Venice* Cargo, and for a Sum of 691l. 3s. 9d. which the Appellant pretended was due to him from *Doyle*, besides Interest and Charges, and also for another Sum of 200l. and upwards which the Appellant likewise pretended that *Doyle* had recovered for the said Sixth Part of the Ship *Succefs*; and the Appellant also prayed an Injunction to stay the Respondent's Proceedings at Law, and on the 31st of *January* 1723 he obtained a common Injunction for want of an Answer.

Injunction ob-
tained 31 Jan.
1723.Ryves's An-
swers.
1st Answer.

The Bill being calculated to gain Time, and therefore requiring an Account of Variety of Letters and Facts, the Respondent was compelled to put in Four several Answers, and at last to be examined on personal Interrogatories; in the first of which he absolutely denied that he was either Partner with, or Factor for the said *Doyle* on account of the said Bills, or a Trustee for him in the said Securities; on the contrary he averred, that he had paid more for *Doyle* on the Credit of the said Bills than they amounted to; he owned his having received the said 300l. and 190l. and denied the whole Equity of the Bill, and submitted to account in his own Right. — The Three last Answers and Examinations were chiefly Explanations and Discoveries of Letters, some of which in passing through several Hands had been mislaid, and could not be found till the Examination was put in.

3 last Answers.

February 1725

Witnesses were examined on both Sides, and it plainly appeared in Proof that the Appellant, previous to his Assignment to the Respondent, had by Letter to Messieurs *Ralphson* and *Hewet* at *Venice*, made over the said *Venice* Cargo to the said *Doyle*, and that *Doyle* had directed the said *Ralphson* and *Hewet* (who were also his Correspondents) to dispose thereof for his Use, and that they had executed those Orders, and applied the Produce of that Cargo to discharge a Debt due to them from the said *Doyle*, who was by this Time become reduced in his Circumstances; and the Appellant brought on his Cause to a Hearing against the Respondent, but after a Hearing of Three Days, on the 16th of *June* 1726 the same was ordered to stand over, and *Doyle* to be brought before the Court.

16 June 1726.
1st Hearing.

Doyle was made a Party, and put in his Answer the 19th of *July* 1726, whereby he owned himself a Bankrupt, and that all his Books and Papers were in his Assignees Hands; swore positively, that the Respondent had answered to him the Value of the 1400l. Bills, and was intitled thereto in his own Right, — Claimed the *Venice* Cargo as made over to him for valuable Consideration prior to the Assignment to the Respondent; — Denied his being indebted to the Appellant in 691l. or any other Sum, or having received 200l. for the Appellant's Sixth Part of the Ship *Succefs*; and on the contrary averred he believed the Appellant, on an Account to be taken, would appear to be indebted to him considerably more than the said 1400l.

Note,

Note. The Respondent in his first Answer, through Mistake, (which proceeded from his speaking upon his Memory only) said, He believed he had received a Letter from *Doyle*, whereby, and by verbal Declarations to Messieurs *Knox* and *Nesbitt*, the Respondent's Correspondents at *London*, *Doyle* had promised, that if the Respondent would release him from the said Three Bills of 1400*l.* he would cause an Attachment made on the *Venice* Cargo to be taken off; when the Truth of that Fact was, the Respondent received no such Letter from *Doyle*, but the said *Knox* and *Nesbitt* had wrote him a Letter, acquainting him, that *Doyle* had made such Declarations to them; and this Mistake the Respondent fully explained in his Answer to personal Interrogatories.

23 Nov. 1726. Nevertheless, the Appellant's Scheme being Delay, and he fearing his Injunction would be dissolved, *Duces tecum*, the 23d of *November* 1726, in order to keep the same on foot, moved for a *Duces tecum* to compel the Respondent to bring in the said Letter, tho' from the Respondent's Answer to personal Interrogatories, the Appellant well knew no such Letter could be produced.

10 June 1727. Afterwards, the 10th of *June* 1727, it was on the Appellant's own Motion referred to Baron St. *Leger*, Reference to a on the Peril of Costs, to inspect into the Proceedings, and report whether any other Letter ought to be Baron. brought in, besides those then lodged.

30 June 1727. Baron St. *Leger* the 30th of *June* 1727 made his Report, and thereby certified, That it did not appear to him that *Doyle* had wrote any such Letter, but that he found the said *Knox* and *Nesbitt* had wrote a Letter to the Respondent, acquainting him, that *Doyle* had made such Declarations to them; and therefore the Baron was of Opinion, it was through Mistake that the Respondent in his first Answer said he believed *Doyle* had wrote such Letter.

1st July 1727. The Court confirmed the Baron's Report *nisi*; and the same Day the Respondent applied to have the Cause set down to be heard; to avoid which, and still further to delay the Cause, the Appellant filed Exceptions to the said Baron's Report.

17 Nov. 1727. On the Respondent's Application the said Exceptions came on to be heard, when the Respondent in Court offered again to be examined on Interrogatories, and to produce his File of Letters and Letter-Book further to clear his said Mistake in his first Answer; and the Appellant refusing to examine him, the Court then ordered the said Exceptions should stand over till the next Day, and that the Respondent should make his Affidavit concerning the said Facts.

18 Nov. 1727. The Respondent made his Affidavit accordingly, and the Exceptions coming on again to be heard, Except. over-ruled & Report confirmed. the Court on a full Hearing over-ruled the same, and confirmed the Baron's Report.

29 Nov. 1727. The Appellant still opposing the Respondent's bringing on the Cause to a Hearing, the Respondent moved to dissolve the Injunction; and upon full Debate of the Matter, the Court at first declared, That if the Appellant would make the Respondent safe, the Injunction should be continued, which he declining, and the Respondent's Attorney consenting in open Court, not to molest the Appellant's Person, the Court thereupon dissolved the Injunction without further Motion.

16 May 1728. The Cause was brought on again to be heard, and it then appearing that *Doyle* was become a Bankrupt, and that the Assignees were not before the Court, It was ordered to be struck out of the Paper for want of proper Parties.

Rehearing 9 July 1728. The Appellant after this procured a Rehearing, when on further long Debate, the Assignees of the Commission of Bankruptcy not being then before the Court, the Cause was again ordered to stand over for want of proper Parties.

Feb. 1729. The Appellant lodged his Appeal before your Lordships, first against the Respondent, and afterwards amended the same, by making the said *Doyle* a Party, whereby he sought to reverse the said Order of the 10th of *June* 1727, Baron St. *Leger*'s Report made in pursuance thereof, and the said several Orders of the 1st of *July*, and the 17th, 18th and 29th Days of *November* 1727, and the 10th Day of *May* and 9th of *July* 1728.

25 Mar. 1730. The said Appeal came on to be heard, when your Lordships were pleased to order and adjudge, Appeal heard. That the said Court of Exchequer should forthwith proceed to hear the Cause, without making the Commissioners or Assignees of any Commission of Bankruptcy against the said *Doyle*, Parties; And that either of the Parties should be at liberty to apply for that Purpose, and that the Injunction should be revived from that Time, only to be continued to the Hearing of the said Cause, without any Retrospect to vacate or punish any thing that might have been done in pursuance of the Order for the Dissolution thereof.

22 April 1730. The Judgment so made and pronounced by your Lordships, was made an Order of the Court of Exchequer aforesaid, and notwithstanding the Respondent used all Endeavours to bring on the said Cause, yet the Appellant found Means to prevent the same till the 8th of *June* 1730, on which Day Baron St. *Leger* being absent, the same was further adjourned till the 24th, when it was heard in Part, and afterwards further heard the 9th, 11th, 12th and 16th of *November*, and 8th of *December* 1730.

8 Dec. 1730. On which Day after due Consideration of all that had been said by both Sides on the several Days of Hearing, it was decreed by the said Court of Exchequer, That the chief Remembrancer or his Deputy, should state an Account between the Appellant and Respondent, on the foot of the several Securities of the 19th of *November* 1720, the Respondent to be charged with all such Sums as he had received thereout, or might have received without wilful Default; but not to be charged with the *Venice* Cargo, and if any Matter should seem difficult, the Remembrancer was desired to report the same specially: And it was further ordered and decreed, That the Appellant should be at liberty to go to an Account with the said *Doyle*, if he thought fit.

The Respondent well knowing that the Appellant's chief Aim was Delay, procured the said Decree to be drawn up by the proper Officer, and a Copy of the Draught to be delivered to the Appellant's Attorney by the 24th of *December* 1730; but could not prevail on him to return the same till about the Middle of *February* following; and when it was returned, the Appellant, still further to delay the Affair, had inserted in the Preamble thereof many unnecessary Recitals, and at the same time threatened

threatened to appeal therefrom, so that the Respondent could not prevail with the Officer to pass the said Decree, till after the Determination of the last Sessions of Parliament, tho' the Appellant never thought fit to offer any Appeal till the 7th of May 1731, the last Day of the last Session, when your Lordships were pleased to reject the same.

Orders 4 & 29
June 1731 for
speeding the
Account.

The Respondent having obtained an Affidavit from *England*, of your Lordships having rejected the Appeal, he proceeded on the Account directed by the Decree, and the Appellant neglecting to attend, an Order was made by the said Court of Exchequer the 4th of June last, that the Appellant should speed the Account; and another Order the 29th of June, that the Appellant should file his Discharge, and attend on the next Summons, of that the Officer should proceed *ex parte* — Notwithstanding which the Appellant still omitted to bring in his Discharge, or to attend the Officer; And on the 15th of July 1731, after the Appellant's being duly summoned, the Remembrancer made his Report, whereby he certified that there was due to the Respondent from the Appellant, over and above all Sums of Money by him received, 2070 l. 2 s. 11 d. $\frac{1}{2}$.

15 July 1731.
Remembrancer's Report.

16 July 1731.
Order to confirm Report nisi.

The Respondent procured an Order to confirm the said Report nisi; but before he had an Opportunity of making that Order absolute, the Appellant was chosen a Member of the House of Commons in *Ireland*, and having the Privilege thereof, the Court of Exchequer would make no further Order in the said Cause on any Application from the Respondent; but the Appellant on the 9th of December last, moved the said Court of Exchequer against confirming the said Report, and for leave to file his Discharge, and to object thereto: Upon which Motion the Respondent appeared by his Council, and offered to consent to what the Appellant asked, provided he would waive his Privilege; but his Council declaring they had no such Directions, the Court would not make any Order.

Thus the Respondent has hitherto been kept out of his just Debt by the Appellant, and hath been put to above 1100 l. Expence in prosecuting these Causes: And still further to harass him,

2d Appeal.

The Appellant has brought a new Appeal before your Lordships, wherein he complains of and seeks to reverse not only the said Decree of the 8th of December 1730, the Remembrancer's Report, and the Orders of the 16th of July and 8th of December last; but also the former Order made in the said Cause of the 10th of June 1727, Baron St. Leger's Report, and the Orders of the 17th and 18th of November 1727, against which he complained in his said first Appeal, on which your Lordships have already given Judgment in manner aforesaid.

That the Respondent is advised, and humbly hopes your Lordships will be of Opinion, that the said several Orders and Reports were all well founded, and according to the Rules of Equity, and that therefore they ought to be Affirmed for the following, among other REASONS;

- I. For that the Order of Reference of the 10th of June 1727, was made on the Appellant's own Motion on a proper Inquiry, whether any other Letter ought to be produced, and the Baron's Report thereon well warranted by the Respondent's Answer to the Personal Interrogatories, and the Exceptions thereto justly over-ruled by the Orders of the 17th and 18th of November 1727; and for that the said several Orders and Report were fully considered by your Lordships, in the Judgment given on hearing the first Appeal.
- II. For that it is in Proof in the Cause, that Three Months before the Assignment made to the Respondent of the *Venice Cargo*, the Appellant had made the same over to the said *Doyle*, and the said *Ralphson* and *Hewet* had, pursuant to *Doyle's* Order, applied the Produce thereof to satisfy a Debt due to them from the said *Doyle*; so that the Respondent never had, nor could have any Benefit from this Cargo by virtue of this Assignment.
- III. For that the Appellant was duly and regularly summoned to attend the Proceedings on the Account before the Remembrancer, and might have brought in his Discharge or Objections to the Report, if he had had any to make thereto.
- IV. And for that it would not have been reasonable for the Court of Exchequer, to have given him leave to file his Discharge after the Report made, wherein the Respondent was regular in his Proceedings; and it was not reasonable that he should have a Favour granted him, of being let in to controvert the same Matter over again, unless upon Terms, that he would agree to wave his Privilege, to prevent Delay for the future.

THE Respondent therefore humbly hopes, after a Ten Years Suit, and so great an Expence as aforesaid, he shall at last have his just Demand satisfied, and in order thereto, that this Appeal shall be dismissed with Costs.

4th May 1732.

C. TALBOT.

THO. LUTWICHE.

Ordered and Adjudged That the Appeal be dismissed, and that the several Orders & Proceedings therein complained of be and are hereby affirmed; And it is further Ordered That the Appell^t do pay or cause to be paid to the Respond^t the Sum of Twenty Pounds for his Costs in respect of the 2^d Appeal.

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when your Lordships were pleased to reject the same. never thought it to offer any Appeal till the year of May 1731, the last Day of the last Session, tho' the Appellant, the Officer to paye

The Respondent having obtained an Affidavit from England, of your Lordships having rejected the Appeal, he proceeded on the Account directed by the Decree, and the Appellant neglecting to attend, an Order was made by the said Court of Exchequer the 4th of June last, that the Appellant should issue the Account; and another Order the 20th of June, that the Appellant should file his Discharge, and attend on the next Summons, or that the Officer should proceed ex parte — Notwithstanding which the Appellant still omitted to bring in his Discharge, or to attend the Officer; And on the 1st of July 1731, after the Appellant's being duly summoned, the Respondent made his Report, whereby he certified that there was due to the Respondent from the Appellant, over and above all Sums of Money by him received, *scilicet* £ 1000 and 10 s.

The Respondent procured an Order to commit the said Reporter; but before he had an opportunity of making that Order absolute, the Applicant was chosen a Member of the House of Commons in Ireland, and having the Privilege thereof, the Court of Exchequer would make no further Order in the said Cause on any Application from the Respondent; but the Applicant on the 9th of December last, moved the said Court of Exchequer against continuing the said Report, and for leave to file his Discharge, and to object thereto: Upon which Motion the Respondent appeared by his Council, and offered to consent to what the Applicant asked, provided he would waive his Privilege; but his Council declining they had no such Direction, the Court would not make any

Thus the Respondent has inherently been kept out of his just Dole by the Appellant, and has been

your Lordships have already given judgment in manner aforesaid. The said Baroness has since that time been in the County of Devon, and has not been in the County of Devon since the 15th and 16th of November 1757, against which he complained in his said first appeal, on which your Lordships were divided. The said Baroness has since that time been in the County of Devon, and has not been in the County of Devon since the 15th and 16th of November 1757, against which he complained in his said first appeal, on which your Lordships were divided. The said Baroness has since that time been in the County of Devon, and has not been in the County of Devon since the 15th and 16th of November 1757, against which he complained in his said first appeal, on which your Lordships were divided.

That therefore they ought to be Affirmed for the following, among other REASONS;

For that the Order of Retraint of the 10th of June 1727, was made on the Appellant's own Motion on a proper Inquiry, whether any other Letter ought to be produced, and the Baron's Report thereon well warranted by the Respondent's Answer to the Personal Interrogatories, and the Exceptions thereto justly overruled by the Orders of the 14th and 18th of November 1727; and for that the said several Orders and Report were fully considered by your Lordships, in the Judgment given on hearing the said Appeal.

*To be heard
at Lord's, on
Sundays*

(Faint, illegible handwriting)

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Respondent
CASE
Bar of the Ha
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David Bindon, *Esg*; - - Appellant.
William Ryves, *Merchant*, Respondent.
The Respondent's CASE.

To be heard at the Bar of the House of
Lords, on Monday the 27 Day
of April 1732.

THE LUTW
E. TALBOT.

2871 Hall, 24